IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.854 OF 2006

Dr.A.L.Khanwilkar ...Petitioner.
Versus
The State of Maharashtra
and Ors. ...Respondents.

....

Mr.Harish P. Pawar, Advocate for the Petitioner.
Mr.Birendra Saraf, A.G.P., for Respondent Nos.1 to 4.

....

CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**
DATED : **JUNE 22, 2006.**

ORAL ORDER : (PER SMT.V.K.TAHILRAMANI,J.)

1. Heard Mr.Pawar learned Counsel for the Petitioner and Mr.Saraf learned A.G.P. for Respondent Nos.1 to 4.

2. The petitioner passed his M.B.B.S. examination from Shivaji University. Thereafter the petitioner started working with E.S.I.S. Hospital, Mulund as Medical Officer on ad-hoc basis since 13.04.2000. Infact, the petitioner started working in the said hospital as per order dated 29.1.2002 passed by this Court in Writ Petition No.255 of 2002.

3. Respondent No.2-Directorate of Medical Education and Research issued notification dated 01.12.2005 in respect of entrance examination (PGM-CET-2006) for Medical Postgraduate Course in MD/MS/Diploma. Respondent No.4 - Medical Superintendent, E.S.I.S. Hospital issued notice informing all the medical officers in Class-II category to submit their applications on or before 17.12.2005. The petitioner submitted his application for the said entrance examination. However, the application of the petitioner came to be withheld on the ground that the petitioner has not passed the required M.P.S.C. exam for appearance to the said entrance examination as stipulated in G.R. dated 21.3.1991.

4. The petitioner filed Writ Petition No.320 of 2006 seeking directions to the respondents to allow him to appear for the entrance examination. The respondents in their affidavit pointed out the Government Resolution dated 21.3.1991 pertaining to the condition of passing M.P.S.C. exam for appearing for the said post graduate entrance examination. It was pointed by the respondents

that there are some conditions in the said G.R. for the selection of Medical Officers who were working under the State Employees Insurance Scheme for post graduate degree/diploma course. It was further pointed out that the petitioner did not fulfil the conditions in the said G.R. especially the condition of passing M.P.S.C. exam, hence, he could not appear for the said entrance examination.

5. The said Writ Petition came to be withdrawn with liberty to file fresh petition challenging the Government Resolution dated 21.3.1991. Hence, the petitioner has again approached this Court.

6. Mr.Saraf, the learned A.G.P. for the respondents has submitted that besides G.R. dated 21.3.1991 there is another G.R. dated 10.09.2004, which was issued by way of an amendment. The said G.R. inter-alia provides as under :-

> 1) The appointment of the Medical Officer Class-II should have been regulated in consultation with the M.P.S.C. or through the Commission under the State

Employees Insurance Scheme.

2) For appearing for post graduation degree course, direct recruitee on the post of Medical Officer Class-II must have completed seven years service inclusive of total service rendered through Commission or in consultation, as on the date of application.

. It is an admitted fact that the petitioner has not been selected by the M.P.S.C. and that the petitioner has been appointed only on adhoc basis on the post of Medical Officer Class-II pursuant to the order of this Court. As per the order of this Court in the earlier Writ Petition, if a candidate from the M.P.S.C. is made available the petitioner would be replaced by the said candidate selected by the M.P.S.C..

7. Thus, it is seen that the petitioner does not satisfy both the criteria i.e. first criteria being that the person wishing to appear for the post graduate examination should have been selected by the M.P.S.C.. Moreover, as the

petitioner has not completed seven years of service, the petitioner would not be eligible to appear for the post graduate entrance examination (PGM-CET-2006).

8. Looking to the criteria laid down in the notification dated 10.9.2004, the name of the petitioner could not be recommended by the respondents to the competent authority for PGM-CET 2006 examination. No fault can be found with the action of the respondents in not forwarding the application of the petitioner for the entrance examination of PGM-CET 2006 examination. Hence, no interference is called for. Writ Petition is accordingly rejected. No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]